

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 15, 2004

In Reply Refer To:  
North Baja Pipeline, LLC  
Docket No. RP05-85-000

North Baja Pipeline, LLC  
1400 SW 5- Avenue, Suite 900  
Portland, OR 97201

Attention: Carl M. Fink, Esq.  
Director, Rates & Regulatory Affairs

Reference: Joint Petition for Limited Case-Specific Waiver

Dear Mr. Fink:

1. On November 19, 2004, North Baja Pipeline, LLC (North Baja) filed jointly with MGI Supply Ltd. (MGI) (jointly, Petitioners) a petition for a limited, case-specific waiver of the Commission's competitive bidding procedures<sup>1</sup> applicable under the capacity release provisions of North Baja's tariff. Specifically, North Baja proposes that it be allowed to omit these competitive bidding procedures and directly assign MGI's firm capacity on North Baja's pipeline system to the successful respondent under a Request for Proposal procedure instituted by the Mexican Comision Federal de Electricidad (CFE). Petitioners request that the Commission consider and grant the requested waiver in an expedited fashion, not later than December 15, 2004, in order to provide bidders in the government-sponsored process with certainty that the winner of the Request for Proposal will be able to acquire the interrelated capacity. The Commission will grant the request for a limited, case-specific waiver, as discussed below. This order benefits the public by facilitating the importation of natural gas into the United States.

2. The Request for Proposal is being conducted by the Mexican government to facilitate the future transportation of regasified liquefied natural gas (LNG), to be received at one or more terminals located onshore or offshore Baja California, to electricity generation units located proximate to Rosarita Beach in Mexico. Since the anticipated daily fuel requirements of these generation facilities would be generally less

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<sup>1</sup> 18 C.F.R. § 284.8 (2004).

than the full downstream deliverability from any of the proposed Baja California LNG import terminals, it is planned that excess natural gas will be made available from this supply for export to markets in the Southwestern United States, including California. North Baja, by reversing the line flow in its pipeline and freeing up capacity no longer needed by MGI, will be able to transport this natural gas on behalf of the shipper identified under the Request for Proposal procedure (or another), from the point of import at the U.S.-Mexican border to markets in California and Arizona.

3. Petitioners request that this waiver be granted in advance of the Request for Proposal procedure to be conducted by the CFE. According to Petitioners, the assignment of MGI's capacity to be facilitated by the requested waiver is a key component of the current service-restructuring program in Mexico. MGI currently holds long-term firm capacity on North Baja's system that it uses to supply the gas needed to fuel CFE power plants. Given the potential to supply the CFE power plants with LNG, CFE has issued a Request for Proposal for long-term natural gas supplies to meet the fuel requirements of certain present and future power plants in Baja California, Mexico. Upon the award of gas supply contracts at the end of this Request for Proposal, MGI will have no use for its capacity on the North Baja system. Accordingly, CFE has included as one of the conditions of the Request for Proposal an obligation on the part of the winning bidder(s) to assume MGI's rights on North Baja. Petitioners state that upon such transfer, the winning bidder(s) would, under the terms of North Baja's tariff, as approved in the November 12 Order in Docket No. RP05-25-000,<sup>2</sup> have a one-time right to reverse the contract path from north-to-south to south-to-north. This would accommodate such entity's ability to ship LNG-sourced volumes of gas that are surplus to the needs of CFE into the United States.

4. Petitioners state that like all firm shippers on the North Baja system, MGI capacity is contracted under a negotiated rate contract, one that is structured on a levelized rate basis over the life of the contract (terminating in 2022). In order for MGI's rights on North Baja to be transferable to winning bidder(s) in a manner that does not leave MGI exposed to residual, long-term liability, Petitioners argue that it is essential that MGI's negotiated rate be transferred along with its capacity rights on North Baja. The CFE Request for Proposal has been designed on the assumption that this transfer of the negotiated rate will be allowed to occur. The instant Petition requests the necessary authorization for this purpose.

5. On October 14, 2004, in Docket No. RP05-25-000, North Baja submitted a tariff filing with the Commission to, *inter alia*, add a new paragraph to its General Terms and Conditions that would allow original shippers on the North Baja system to reverse the primary direction of flow under their contracts and grant those shippers a one-time right

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<sup>2</sup> *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004) (November 12 Order).

to permanently assign all or a portion of their long-term firm negotiated rate agreements to creditworthy third parties. In the November 12 Order, the Commission found that North Baja had not adequately supported this proposal to permanently assign negotiated rate agreements without undergoing a competitive bidding process.<sup>3</sup> In rejecting North Baja's tariff proposal effectively seeking a blanket waiver of the Commission's competitive bidding requirements for all future circumstances, the Commission found that this rejection was without prejudice to the pipeline filing and seeking a case-specific waiver of the Commission's competitive bidding procedures for a particular assignment, provided that it demonstrates that such a waiver is in the public interest.

6. Public notice of Petitioners' filing was issued on November 30, 2004, with protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). No protests were filed. Any timely motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice (18 C.F.R. § 385.214 (2004)). Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 385.214(d) (2004), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

7. Commission policy on capacity assignments, as reflected in 18 C.F.R. § 284.8 (2004), generally requires that the capacity be subject to posting and bidding procedures to ensure that it be assigned to the shipper who values it most. In this case, the government of Mexico is sponsoring a Request for Proposal process that is simultaneously designed to acquire LNG supplies for electric generation in Mexico, and to permanently assign to the LNG supplier MGI's pipeline capacity contract that is currently used to supply those generation facilities. The proposed capacity assignment will occur at the levelized rate originally negotiated with North Baja. The Commission finds that this specific proposal, by giving financial certainty to both MGI and North Baja, will facilitate the importation of natural gas (from LNG terminals in Baja California, Mexico), and foster capacity rationalization (by utilizing existing pipeline capacity to deliver the new gas supplies, and thereby avoiding new construction).

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<sup>3</sup> *Id.* at P 20.

8. Therefore, the Commission grants Petitioners' request for a limited, case-specific waiver of the competitive bidding procedures at 18 C.F.R. § 284.8 (2004) in order to allow MGI to assign firm capacity rights pursuant to CFE's Request for Proposal procedure.

By direction of the Commission.

Magalie R. Salas,  
Secretary.